IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
Summons for Judgment No.l67 of 2004
in
Summary Suit No. 2379 of 2003
Tips Industries Ltd ... Plaintiff
vs
Tutu Films and anr ...Defendants

Mr.H Thakore i/b M/s Thakore Jariwala and Associates for plaintiff
Mr.S.K.Shetty i/b Shetty and Associates for defendants.

CORAM: S.J.VAZIFDAR J.

Dated 25.l.2005

P.C:

l The suit is filed to recover the amount of Rs.63,05,370 together with interest on the principal sum of Rs. 35 lacs. The suit is filed on the basis of an agreement dated 2lst October l999, under which the plaintiff was to advance aggregate amount of Rs.l.50.000 lacs to the defendants. The defendant no.2 carries on business as producer as a sole proprietor of defendant no.l.

2 Admittedly the plaintiff advanced an amount of Rs.35 lacs under the said agreement. The Plaintiff did not become liable to advance the balance amount as the occasion to do so did not arise, as no further work was done by the defendant. Clause 7(d) of the agreement reads as under:

"7(d) In the event, the delivery of the Master Tape/original recording track containing all songs, entire dialogues and other musical works, is not handed by the Producer to the Company on or before 3l.8.2000 with a grace period of 60 days as stated in para 7, the Producer must refund the entire amount on demanding/demand alongwith 24% interest p.a. It is hereby agreed that the time is the essence of this Agreement".

3 Admittedly the defendant failed and neglected to deliver the master tape/ original recording track containing all songs,entire dialogue and other musical work as per clause 7(d). The plaintiff therefore is entitled to recover the said amount of Rs.35 lacs together with interest as provided in clause 7(d).

4 The only defence to the suit is that the claim is barred by law of limitation. The amount of Rs.35 lacs was advanced by three cheques dated 2lst October l99l, 24th March 2000 and 3rd July 2000 in the sum of Rs.l5 lacs, Rs.l0 lacs and Rs.l0 lacs respectively. The defence, however, is without any

substance. The cause of action arose on 3lst October 2000. This is clear from clause 7(d) of the agreement under which the defendant was to perform his obligation thereunder by 3lst August 2000 and the grace period of 60 days. The plaintiff could not have sued to recover the amount prior thereto.

5 In the circumstances there is no defence to the suit.

. In the circumstances the Summons for Judgement is made absolute with costs. Interest, however, after the date of filing of the suit shall be at l2% per annum.